In the High Court of Judicature at Madras

Dated: 12.12.2006

Coram:

The Honourable Mr.Justice P.SATHASIVAM
and
The Honourable Mr.Justice S.TAMILVANAN

Writ Petition No.7888 of 1999

A.Ramamurthy ..Petitioner

..vs..

1. The Commandant,
   Central Industrial Security Force,,
   Shriharikotta, A.P.

2. Deputy Inspector General,
   Central Industrial Security Force,
   Besant Nagar,
   Madras-600 090.

3. Inspector General,
   SWS, CISF, RCF,
   Chembur, Mumbai-400 074. ..Respondents

Writ petition filed under Article 226 of the Constitution of India for issuance of a Writ of Certiorarified Mandamus, to call for the records relating to the Order dated 11.09.1998 passed by the 3rd respondent in his Order No.V-11814/27/SWB/L&R/98-8902, confirming the order of the 2nd respondent in his Order dated 04.03.1998 passed in No.V-11014/17/85/A6/(SZ)/1362 and quash the same and to direct the respondents to pay the backwages for the period from 27.05.1985 to 09.02.1998 to the petitioner.

For Petitioner : Mr.M.Md.Ibrahim Ali

For Respondents : Mr.C.Krishnan,
SCGSC.,

ORDER

(Order of the Court was made by P.SATHASIVAM,J.,)

Aggrieved by the orders of the respondents dated 04.03.1998 and 11.09.1998, the petitioner has filed the above writ petition to quash

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the same and direct the respondents to pay backwages for the period from 27.05.1985 to 09.02.1998.

2. The petitioner A.Ramamurthi, while serving as Cook in Central Industrial Security Force Unit, (for short "CISF") SHAR Centre, was dealt with under Rule 34 of CISF rules, 1969 on the following charges.

> "Charge-I:
> Grave indiscipline and gross misconduct in that, he behaved in an unbecoming manner by refusing to accept the official communication, when served and assembled at main gate-I on 18.11.79 at about 1030 hrs.and created an ugly scene and disturbance.
>
> Charge-II:
> Grave indiscipline and misconduct in that he, while under suspension unauthorisedly overstayed the permission granted to him from 10.8.83 to 23.3.84, which could not be fully covered by the Medical Certificate and reported late to the Unit on 24.7.84, when he was declared fit w.e.f.23.7.84.
>
> Charge-III
> Grave indiscipline and misconduct in that he, failed to attend the Medical Board at 1000 hrs on 26.3.84 as directed and reported only on 28.3.84 when advised by the Supdt.I/C for institutionalisation and treatment for 'Alcoholic Psychosis', he refused to get himself institutionalised in Govt.Royapettah Hospital, Madras-14.
>
> Charge-IV:
> Grave indiscipline and misconduct in that he, while under suspension, left the Unit Hqrs.from 2200 hrs on 30.9.84 and returned back at about 2030 hrs on 02.10.84, without leave or permission".

3. On earlier occasion, based on the above charges, he was awarded with the punishment of dismissal from service. However, by order of this Court dated 16.09.1997 in W.A.No.364 of 1997, the matter was remitted to the first authority to reconsider in so far as the quantum of punishment. Pursuant to the same, the petitioner was reinstated in service without any backwages. The intervening period from the date of dismissal from service to the date of reinstatement in service is to be treated as Dies-Non. By order dated 20.01.1998, the punishment of dismissal from service is modified to that of withholding of three increments with cumulative effect. The said order was challenged by way of an appeal. The Appellate Authority, by order dated 04.03.1998, accepting the conclusion of the disciplinary authority, rejected the appeal after finding that there

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is no justification to grant backwages as requested and the intervening period is treated as Dies-Non as per the order dated 20.01.1998. Aggrieved by the same, the petitioner preferred an appeal to Inspector General and the said authority also confirmed the orders of the Original and Appellate Authorities and rejected the representation of the petitioner, hence the present writ petition.

4. Learned counsel for the petitioner submitted that in view of the order of the Division Bench dated 16.09.1997 in W.A.No.364 of 1997, the punishment, namely, withholding of three increments with cumulative effect, cannot be sustained. He further contended that the decision of the disciplinary authority treating the intervening period as Dies-Non also cannot be sustained. On the other hand, learned counsel appearing for the respondents, by drawing our attention to the proven charges levelled against him, submitted that the punishment awarded is reasonable and acceptable and there is no ground for interference by this Court.

5. We have considered the relevant materials and rival contentions. We have already extracted the charges levelled against the petitioner in the earlier part of our Order. It is not in dispute that the Division Bench, in their judgment dated 16.09.1997, remitted the matter only with regard to passing of appropriate penalty. In para 4 of the Order, the Division Bench has observed as follows:

> "It is for the authorities to pass appropriate orders afresh keeping in view the facts and circumstances including the passage of time, the charges attributed and the petty nature of the employment of the delinquent and then fix the quantum of punishment".

6. In the light of the same, as rightly pointed out by the learned counsel for the respondents, only for the purpose of deciding the quantum of punishment, the Division Bench has remanded the same to the original authority. In such circumstances, we have to see whether the modified punishment awarded by the authority is reasonable or not.

7. A perusal of the four charges clearly show that the petitioner was charged not only for overstayal but also for disobedience of the orders of the higher authorities. It is also not in dispute that all the charges have been proved in the manner known to law and after affording opportunity to the petitioner. It is pointed out that irrespective of Section 18(2A) of CISF Act, the respondents have initiated departmental proceedings by conducting enquiry. In other words, it is pointed out that as per sub-section (2A) of section 18, they are free to take action under the Code of Criminal procedure; however, without resorting to the same, they proceeded with the Service Rules. It is also pointed out that

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considering the relief prayed for by the petitioner, it is but proper to implead the Union of India as one of the respondents and in the absence of the same, no relief as claimed by the petitioner can be granted. The said objection is also well founded.

8. Learned counsel appearing for the respondents heavily relied on the observation made by the Division Bench dated 16.07.2004 in W.A.No.1698 of 2003, which relates to an order passed under the provisions of the Central Reserve Police Force Act and Rules. The following observation in para 22 is relevant;

> "The respondent is serving in a disciplined force and the discipline and dedication of duty are hallmark in a disciplined force like CRPF. The disobedience of the order of superior officer in a disciplined force like CRPF cannot be viewed lightly and if the indiscipline in a disciplined force in any form is condoned, it will give a wrong signal to the other members of the Force".

In the light of the fact that the petitioner is also serving in the disciplinary Force, we are in respectful agreement with the observation made by the Division Bench.

9. In the light of the statutory provisions as interpreted by the Division Bench and the proved charges levelled against the petitioner and taking note of the fact that the proportionality of the punishment has been considered by all the authorities, we are of the view that in the absence of any other additional material or perversity in the orders, the same cannot be lightly interfered with in a writ petition. On the other hand, we are in agreement with the conclusion arrived at by all the authorities. Consequently, the writ petition fails and the same is dismissed. No costs.

gl

Sd/
Asst. Registrar

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Sub Asst.Registrar

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To

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ONE CC TO MR.M. MD. IBRAHIM ALI, ADVOCATE SR 61890

ONE CC TO MR.C. KRISHNAN, SCGSC SR 61458

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